IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 726 OF 2005

Babu M. Shetty .. Appellant

Vs.

Municipal Corporation of
Gr. Bombay and anr. .. Respondents

Mr. R.A. Thorat with Mr. B.P. Shukla for appellant.
Ms. Geeta Jogalekar for Respondent No.1.
Mr. A.V. Jain i/by A.V. Jain & Associates for Respondent No.2-Defendant No.2.

CORAM: B.H. MARLAPALLE, J.

Date : July 01, 2005.

P.C.:

1. Not on board. Produced papers due to urgency. Heard Mr. Thorat with Mr. Shukla the learned counsel for the appellant who is plaintiff in L.C. Suit No. 6209 of 2003 and Ms. Jogalekar the learned counsel appears for respondent no.1 and Mr. Jain the learned counsel appears for respondent no.2.

2. On 28th June 2005 L.C. Suit No.6209 of 2003 had come up before the trial court i.e. the City

Civil Court at Mumbai and as the Defendant No.1 failed to file Written Statement within the stipulated period of 90 days, the court directed to proceed without Written Statement against Defendant No.1. Defendant No.2 has already filed Written Statement. The learned Advocate for the plaintiff was called upon to proceed with arguments on the Notice of Motion and he obviously indicated his unreadiness. The court, therefore, vacated the ad-interim injunction. On the same day i.e. 28/6/2005 an application was submitted by the learned Advocate for the plaintiff saying that he was ready to argue the Notice of Motion and that the order passed on 28/6/2005 be recalled. The learned Judge of the trial court passed the order, "Keep on date already fixed.".

3. Mr. Thorat the learned counsel for the appellant submitted that when the respondent-Corporation has not filed its Written Statement within the stipulated period, it was not warranted for the trial court to proceed to vacate the ad-interim order by noting that the Advocate for the

plaintiff was not ready for hearing. It was sought to be submitted that Junior of the learned Advocate for the plaintiff was present in the court. The learned counsel for the defendant no.2 disputes this position and he states that when the plaintiff's Advocate was called upon to advance the argument on the Notice of Motion, the Advocate present straight away said that he was not ready for hearing on the Notice of Motion and, therefore, the trial court had no alternative but to vacate the ad-interim order.

4. Mr. Jain, the learned counsel for the defendant no.2 placed on record a certified copy of the Roznama in L.C. Suit No.6209 of 2003 and it is noted that ad-interim order was passed on 19/12/2003 and thereafter at least on 5-6 occasions the plaintiff as well as his advocate remained absent. The ad-interim order continued till 28/6/2005. Therefore, as long as defendant no.2 filed reply it was necessary for the plaintiff to go ahead with the hearing on the Notice of Motion either for confirmation of the ad-interim order or for final decision on the Notice of Motion. The tenor of the impugned order indicates

that the court was left with no choice but to vacate the ad-interim order. Prima facie the approach of the trial court does not appear to be unwarranted.

5. Mr. Thorat submitted that in view of the present rainy season it was necessary for the plaintiff to have some protection and the application was filed on the very same day indicated that the Advocate was ready and willing for advancing his arguments on the Notice of Motion. It is not necessary to record any observations on this plea. Mr. Jain the learned counsel for the defendant no.2 stated that front portion of the notice structure has already been removed and what remains as at present is the rear portion beneath which kitchen is located (partly). The Notice of Motion has been adjourned to 20/7/2005 by the trial court and keeping in mind the difficulties that are likely to be faced during rainy season, and without being influenced by the respective contentions, it would be desirable that the status quo as at this moment is continued and the Notice of

Motion is heard on 20/7/2005 but by imposing exemplary costs so that such stand off before the court does not occur in future.

6. Hence the appeal is disposed off by directing the parties to maintain status quo as of now in respect of the suit structure till 20/7/2005 and on payment of cost quantified at Rs.10,000/-. The amount of cost shall be remitted to the Maharashtra State Legal Services Authority within one week from today by the appellant. Appeal disposed of in above terms.

. Writ to go forthwith.

(B.H. Marlapalle,J.)